

**Special Inspector General
for the Troubled Asset Relief Program**

SIGTARP Shutdown Plan
During Periods of Lapsed Appropriations
April 6, 2011

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Purpose

The Special Inspector General for the Troubled Asset Relief Program (“SIGTARP”), at its inception, was provided a block of mandatory, no-year funding. In addition to this no-year funding, it receives an annual appropriation. In carrying out its mission, SIGTARP conducts oversight of other entities funded in whole or in part through no-year or non-appropriated funds. To the extent its mandatory funds are available and expenditure of the funds is effective and efficient in conducting oversight, SIGTARP will continue operations and not implement this plan. SIGTARP will reevaluate this operational status at the end of the first week of any lapse in annual appropriations and periodically thereafter.

In the event it becomes necessary to suspend operations, this shutdown plan provides policy guidance and instructions for actions to be taken by SIGTARP when Congress fails to enact either regular appropriations, a continuing resolution, or needed supplementals, resulting in an interruption of appropriated funds available to continue SIGTARP’s activities. This shutdown plan distinguishes between those positions engaged in excepted activities that would not be furloughed and non-excepted positions engaged in activities that would be furloughed.¹

Background

The Anti-Deficiency Act, 31 U.S.C. §§ 1341, et seq. (the “Act”), prohibits federal agencies from entering into obligations in advance of appropriations and prohibits employing federal personnel except in emergencies, unless otherwise authorized by law.

The Attorney General issued two opinions² in the early 1980s with respect to the implications of the Act. The language and legislative history of the Act prohibit agency officials from incurring obligations or contracting for services in the absence of appropriations (except when authorized by other law). The Office of Legal Counsel of the Department of Justice issued an opinion dated August 16, 1995, that reaffirms and updates the 1981 opinion.

The relevant points of the 1995 guidance provide as follows:

¹ Pursuant to 5 C.F.R. § 752.402 (c), furlough is defined as: “the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.”

² Applicability of the Antideficiency Act Upon a Lapse in an Agency’s Appropriations (1980) and Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations” (1981).

- Not all agencies are funded by annual appropriations exclusively. Some operate under multi-year, no-year, or indefinite appropriations provisions that do not require passage of annual appropriations legislation. To the extent that these agencies use non-appropriated funds to continue operations, they fit within an exception to the Antideficiency Act.
- Employees performing excepted activities (as discussed in the Department of Justice opinions) are generally those that are authorized by law or that protect life and property and may be continued.
- Employees performing non-excepted activities (as discussed in the Department of Justice opinions) may not perform any services other than those involved in the orderly suspension of non-excepted activities.
- Agencies may not permit voluntary performance of non-excepted services.

Agency heads make the determinations that are necessary to operate their agencies during an appropriations hiatus (within the guidance established by the Department of Justice and pursuant to normal agency processes for the resolution of issues of law and policy).

Shutdown Plan Requirements

Shutdown Preparation

Current List of Functions

A list of “excepted” and “non-excepted” organizational functions are included as an ATTACHMENT hereto. Excepted activities and non-excepted activities are described below.

“Excepted” activities are those where positions would not be furloughed as a result of a shutdown, per one of the below statutory exceptions:

- Funded by other than annual appropriated funds:³ Some functions are covered by multi-year or advance appropriations, or no-year or revolving funds and thus would not be affected by an annual appropriation lapse.
- Authorized by necessary implication: Certain activities could be implicitly authorized because of their connection with other operations which are mandated to continue by law or for which funds otherwise continue to be available.
- Necessary for safety of human life or protection of property: The Budget Enforcement Act of 1990 amends Section 1342 of Title 31 to make clear that regular, on-going functions whose suspension would not pose an imminent threat to life and property would not qualify as excepted activities. The risk to life or property must be real, not hypothetical, so that a delay in activities is not permissible. In particular, administrative, research and other overhead activities supporting excepted activities should be carefully reviewed to make certain their continuance is essential to carrying out such activities.
- Discharge of President’s Constitutional duties: There are some executive branch functions that are considered instrumental in the performance on the President’s constitutionally assigned duties.
- Necessary for the orderly shutdown of functions: Agencies may obligate funds during periods of lapsed appropriations to bring about the orderly close down

³ As noted previously, SIGTARP is funded, in part, with mandatory, no-year funding.

of non-excepted activities. Contingency plans which call for winding down operations of an agency after an appropriations lapse should be consistent with the Anti-Deficiency Act. At the same time, the activities of employees during this period must be wholly devoted to closing down the function and upon completion, these employees would be released.

“Non-Excepted” activities are all other functions other than those designated as “excepted” above. Positions in these functions would be furloughed, where “excepted” positions would remain on duty. This could also include positions that may have to be recalled at a later date, if the furlough continues for more than a week.

Employee Notification Procedures

Employees will be advised of the potential shutdown of operations and their “excepted” or “non-excepted” status prior to the implementation phase of shutdown. Employees who are on-site will be notified of the impending shutdown by a hand-delivered letter. Employees who are off-site will be sent email correspondence requesting affirmative receipt confirmation of notification.

Employees will be assured that should a shutdown be necessary, their health and life insurance coverage will not be affected. Employees may arrange to pay their portion of the health benefit costs on an on-going basis or upon their return to duty.

Shutdown Implementation

Shutdown Procedures

When a lapse occurs, all normal operations will cease and all further efforts will be devoted solely to closing down operations, protecting human life and health, protecting government property, and performing other excepted activities. Management will determine the number of employees required to do this work and this work only.

Routine operations already in process at the time the lapse begins should be carried forward to completion, or to a point where they can safely be interrupted, in order to avoid losing the investment in the work, which has already started. The invested work is a form of government property, which should be protected from loss.

Employees in a travel status will be notified by management whether to return home or to continue with their off-site business.

Managers should advise employees who are scheduled to be on annual, sick, court, or military leave that if a lapse in appropriations occurs while they are on leave, their leave will be canceled and they will be placed in a furlough status.

When a lapse occurs, essential operations for outside agencies whose operations must continue is allowable. For example, continuing computer operations to prevent the loss of data in process would be permissible.

When a funding lapse becomes imminent, SIGTARP will develop procedures for furloughing employees. The procedures will take into consideration the various categories of employees: managerial, temporary, etc. Detailed instructions will be developed and issued when the need arises.

Actions necessary to transfer real and personal property will require some coordination within SIGTARP and between those agencies associated with SIGTARP. In some instances because of a significant connection with other agencies, activities may be continued according to law.

Shutdown Reactivation of Functions

Reactivation of agency functions may begin when funds are appropriated to SIGTARP. All employees will be able to return to work. In most cases, it is impossible to notify all employees that they should return to work with short notice. Managers are encouraged to inform their employees that they should stay tuned to the media for information on returning to work. If possible, other sources of communications will be made available such as:

- A central point-of-contact will be established where employees may obtain information.
- SIGTARP phone tree will be activated.

Summary of Shutdown Impacts

Information required by OMB Circular A-11

1. Estimated time to complete shutdown of non-excepted activities	Not in excess of a half day
2. Number of employees expected to be on board prior to implementation of shutdown plan	137
3. Number of employees to be retained due to: a. Funded by other than annual appropriated funds b. Engaged in military, law enforcement, or direct provision of health care activities c. Necessary for protection of life and property d. Authorized by necessary implication e. Discharge of President's constitutional duties (<i>note: this is the category for PAS</i>)	 18* 4** 15
4. Total number of excepted employees	37

*Exempted employees are engaged in law enforcement/criminal investigative activities that cannot be rescheduled. For example: trials and trial preparation (Speedy Trial Act), preparation for and conducting Grand Jury proceedings, and application for and execution of search and arrest warrants.

**Primarily monitoring of hotline complaints for threats and information requiring immediate or emergency handling to protect life and property.

Note: The numbers may vary based on the actual time of the implementation of this plan.

ATTACHMENT

Listing of Functions by Shutdown Category⁴

Function/Office	Category	
	<u>Excepted</u>	<u>Non-Excepted</u>
<u>Front Office of the SIG</u>		
Special Inspector General	X	
Deputy Special Inspector General	X	
Chief of Staff	X	
Deputy Chief of Staff	X	
Senior Policy Analyst		X
Administrative Mgmt Specialist		X
<u>Office of General Counsel</u>		
General Counsel	X	
Senior Attorney Advisor	X	X
Director, Communications	X	
Director, Legislative Affairs	X	
<u>Office of Audit</u>		
Deputy SIG, Audit	X	
Supervisory Program and Mgmt Analyst		X
Program Analyst		X
Supervisory Auditor		X
Auditor		X
Writer-Editor		X
Administrative Support Specialist		X
<u>Office of Investigations</u>		
Deputy SIG, Investigations	X	
Assistant DSIG for Investigations	X	

⁴ The assignment of positions to an excepted or non-excepted category is based upon an operational assessment as of the preparation of this plan. These assignments will be reviewed in the event of an actual shutdown based upon the then-current operational needs of SIGTARP.

Supervisory Criminal Investigator		X
Criminal Investigator	X ⁵	
Investigator		X
Supervisory Attorney Advisor		X
Senior Attorney Advisor		X
Lead Investigative Research Analyst		X
Program Analyst		X
 <u>Office of Operations</u>		
Deputy SIG, Operations	X	
Assistant DSIG, Operations		X
Chief Information Officer		X
IT Specialist		X
Chief Financial Officer	X	
Budget Analyst	X	
Financial Specialist		X
Contract Specialist	X	
Program Analyst		X
Supervisory Program Analyst		X
Director, Human Resources	X	
Human Resources Specialist		X
EEO Specialist		X

⁵ Two Desk Officers (Criminal Investigators) will remain on duty. All other Criminal Investigators may be called back based on time-sensitive judicial proceedings and/or investigations.

SAMPLE MEMORANDUM FOR NON-SES EMPLOYEES

MEMORANDUM FOR ALL EMPLOYEES IN THE GENERAL SCHEDULE

FROM: Director, Human Resources

SUBJECT: Notice of Furlough

In the absence of either an FY 2011 appropriation, or a continuing resolution for the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), no further financial obligations may be incurred by SIGTARP, except for those related to the orderly suspension of SIGTARP's operations or performance of excepted activities as defined in the SIGTARP Shutdown Plan dated April 6, 2011.

Because your services are not needed, or are no longer needed, for orderly suspension of operations and you are not engaged in one of the excepted functions, you are being placed in a furlough status effective [REDACTED]. This furlough, (e.g., nonpay, nonduty status), is not expected to exceed 30 days. You should listen to public, radio, and news broadcasts and when you hear that a continuing resolution or a FY 2011 appropriation for SIGTARP has been approved; you will be expected to return to work on your next regular duty day.

Congress' failure to fund the SIGTARP's work in a timely manner and the resulting curtailment of SIGTARP's activities qualifies as an emergency. Thus, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404 (d)(2).

If employees are being retained in your competitive level, they are required for orderly suspension of SIGTARP operations or they are performing one of the excepted activities defined in the SIGTARP Shutdown Plan.

During the furlough period, you will be in a nonpay, nonduty status. Additionally, during the furlough, you will not be permitted to serve as an unpaid volunteer, but must remain away from your work place unless and until recalled. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled.

Employees who have completed a probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing.

Employees in the excepted service who have veterans preference may appeal to the MSPB if they have completed one year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the MSPB if they have completed two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two years or less.

If you have the right of appeal to MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough. If you wish to file an appeal, you may obtain information from the MSPB at <http://www.mspb.gov/appeals/appeals.htm>.

Deciding Official

Date

I acknowledge receipt of this decision.

Employee's Signature

Date

SAMPLE MEMORANDUM FOR SES EMPLOYEE

MEMORANDUM FOR ALL EMPLOYEES IN THE CAREER SENIOR EXECUTIVE SERVICE

FROM: Director, Human Resources

SUBJECT: Notice of Furlough

In the absence of either an FY 2011 appropriation, or a continuing resolution for the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), no further financial obligations may be incurred by SIGTARP, except for those related to the orderly suspension of SIGTARP's operations or performance of excepted activities as defined in the SIGTARP Shutdown Plan dated April 6, 2011.

Because your services are not needed, or are no longer needed, for orderly suspension of operations and you are not engaged in one of the excepted functions, you are being placed in a furlough status effective [REDACTED]. This furlough, (e.g., nonpay, nonwork status), is not expected to exceed 30 days. You should listen to public, radio, and/or news broadcasts for updates. When you hear that a continuing resolution, or the FY 2011 appropriation for SIGTARP has been approved; you will be expected to return to work on your next regular duty day.

Congress' failure to fund SIGTARP's work in a timely manner and the resulting curtailment of SIGTARP's activities qualifies as an emergency. Thus, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR § 359.806(a).

If employees are being retained in your competitive level, they are required for orderly suspension of agency operations or they are performing one of the excepted activities defined in the SIGTARP Shutdown Plan.

During the furlough period, you will be in a nonpay, nonduty status. In addition, during the furlough, you will not be permitted to serve as an unpaid volunteer, and must remain away from your work place unless and until recalled. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled.

Senior Executive Service career appointees adversely affected may appeal this action to the Merit Systems Protection Board (MSPB). Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing.

If you have the right of appeal to MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough. If you wish to file an appeal, you may obtain information from the MSPB at <http://www.mspb.gov/appeals/appeals.htm>.

Deciding Official Date

I acknowledge receipt of this decision.

Employee's Signature Date